

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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|--------------------------|---|-------------------------------|
| PETER R. TIA, #A1013142, |) | NO. 1:12-cv-00295 LEK/KSC |
| |) | |
| Plaintiff, |) | ORDER DENYING MOTION TO |
| |) | COMPEL ADHERENCE AND |
| vs. |) | DISMISSING ACTION PURSUANT TO |
| |) | 28 U.S.C. § 1915(e)(2) |
| LYLE ANTONIO, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**ORDER DENYING MOTION TO COMPEL ADHERENCE AND
DISMISSING ACTION PURSUANT TO 28 U.S.C. § 1915(e)(2)**

Before the court is Petitioner's "Motion to Compel Adherence To 8-15-12 Notice of Jan. 2012 HPA Hrg. Sched." Mot., ECF #15. Plaintiff demands the court take notice of his August 21, 2012, document, ECF #11, in which he directed the court to a Notice of Hearing from the Hawaii Paroling Authority. Plaintiff again protests the dismissal of his Complaint as frivolous and for failure to state a claim. See Ord., ECF #8. Plaintiff was granted leave to amend the Complaint on or before August 24, 2012. Plaintiff states that he files this Motion "in lieu of 8-24-12 Amendment," and appears to argue that the dismissal of his Complaint with leave to amend constitutes an Eighth Amendment violation. See Mot. at 1.

The court took notice of Plaintiff's August 21, 2012 filing when it construed the document as a motion for reconsideration of the Order dismissing Plaintiff's Complaint. See Ord. Denying Motion for Reconsideration, ECF #14. For the

reasons set forth in the Order denying reconsideration, this court DENIES the present Motion.

Plaintiff has failed to adequately and timely amend the Complaint despite being given ample time to do so. Petitioner also states that he has no intention of filing an amended complaint. Moreover, amendment appears futile. Accordingly, this action is DISMISSED with prejudice. The Clerk shall close the file and note that this dismissal may constitute a strike pursuant to 28 U.S.C. § 1915(e)(2).

The court further CERTIFIES that there are no non-frivolous issues for appeal and an appeal in this action would not be taken in good faith. 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002).

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, September 27, 2012.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

Tia v. Antonio, et al., 1:12-cv-00295 LEK-KSC; ORDER DENYING MOTION TO COMPEL ADHERENCE AND DISMISSING ACTION PURSUANT TO 28 U.S.C. § 1915(e)(2); G:\docs\prose attys\Ords\DMP\2012\Tia 12-295 lek (dsm C ftsc & friv fail to amend).wpd